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May 27, 2009

Via Hand-Delivery and Email

The Honorable Shira A. Scheindlin  
U.S. District Court for the Southern District of New York  
Daniel Patrick Moynihan Courthouse  
500 Pearl Street, Room 1620  
New York, New York 10007-1312

Re: *MDL 1358 / City of New York v. Amerada Hess, et al.*, 1:04-cv-3417 (SAS)  
Trial Structure Plan

Dear Judge Scheindlin:

I write in anticipation of our trial planning conference tomorrow (May 28) to propose that the parties try the City's Station 6 claims in a first phase of the trial, while reserving trial of the other bellwether sites for later.

A trial on Station 6 would allow an airing of virtually all of defendants' positions (as we understand them) on causation and injury. Moreover, limiting the trial to Station 6 would result in significant savings in witness time with respect to causation and damages for the other five bellwether sites, including extensive expert testimony concerning numerous release sites, well-specific contaminant fate and transport modeling, and damages. At the same time, a jury verdict on liability and causation on Station 6 would provide guidance for other cases in this MDL, and would also give the parties in this case significant information for settlement purposes with respect to the other bellwether sites and the rest of this case.

I proposed this approach to counsel for ExxonMobil and Lyondell (a copy of my email to Messrs. Sacripanti and Hoffman is attached). I have not received a response as of this writing.

Respectfully submitted,

A handwritten signature in blue ink that reads 'Victor M. Sher'. The signature is fluid and cursive, with the first name 'Victor' being more prominent than the last name 'Sher'.

Victor M. Sher

Cc: Peter Sacripanti (via email)  
Alan Hoffman (via email)  
All Counsel (via LNFS)

**Vic Sher**

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**From:** Vic Sher  
**Sent:** Monday, May 25, 2009 4:57 PM  
**To:** Sacripanti, Peter; Hoffman, Alan  
**Cc:** Susan Amron  
**Subject:** NYC Trial Phasing Proposal

Dear Peter and Alan:

I write to follow up on the Court's suggestion that we meet and confer on ways to structure the trial in advance of our trial planning conference on Thursday. The City proposes that the parties try Station 6 in a first phase, while reserving the remaining bellwether sites for later.

A trial on Station 6 would allow an airing of virtually all of defendants' positions (as we understand them) on causation and injury. Moreover, limiting the trial to Station 6 would result in significant savings in witness time with respect to causation and damages for the other five wells, including extensive expert testimony concerning numerous release sites, well-specific contaminant fate and transport modeling, and damages. A jury verdict on Station 6 would also provide meaningful guidance for settlement purposes with respect to the rest of the case.

I hope you will join us in proposing this approach to the Court. Please let me know your view by close of business Tuesday, May 26, so that we can advise the Court of the parties' positions before the conference on Thursday.

Sincerely,

Vic

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5/27/2009